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**DEPARTMENT OF JUSTICE**

**Executive Office for Immigration Review**

**8 CFR Parts 1003 and 1292**

**EOIR Docket No. 174; A.G. Order No. 3384-2013**

**RIN 1125-AA66**

**Reorganization of Regulations on the Adjudication of Department of Homeland Security Practitioner Disciplinary Cases**

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts without change an interim rule with request for comments published in the Federal Register on January 13, 2012. The interim rule amended regulations of the Executive Office for Immigration Review (EOIR) at the Department of Justice (Department) by removing unnecessary provisions in its regulations that are the responsibility of the Department of Homeland Security (DHS). This rule also transferred certain provisions to another CFR part. Finally, the interim rule made revisions to reference applicable DHS regulations and to make technical and clarifying amendments to regulations in that part.

**DATES:** This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Jeff Rosenblum, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg

Pike, Suite 2600, Falls Church, Virginia, 22041, telephone (703) 305-0470 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** On January 13, 2012, the Department published an interim rule with request for comments amending 8 CFR parts 1003 and 1292. Reorganization of Regulations on the Adjudication of Department of Homeland Security Practitioner Disciplinary Cases, 77 FR 2011 (Jan. 13, 2012). The Homeland Security Act of 2002, as amended, transferred the functions of the former Immigration and Naturalization Service (INS) to DHS; however, it retained the functions of EOIR within the Department, under the direction of the Attorney General. 6 U.S.C. 521; 8 U.S.C. 1103(g); *see generally* Matter of D-J-, 23 I&N Dec. 572 (A.G. 2003). As the existing regulations often intermingled the responsibilities of the former INS and EOIR, this transfer required a reorganization of title 8 of the CFR, including the establishment of a new chapter V in 8 CFR pertaining to EOIR. *See* 67 FR 9824 (Feb. 28, 2003). As part of this reorganization, a number of regulations pertaining to the responsibilities of DHS intentionally were duplicated in the new chapter V because those regulations also included provisions relating to the responsibilities of EOIR. One such instance involved DHS's practitioner disciplinary regulations at 8 CFR 292.3, which the Department duplicated in 8 CFR 1292.3 because EOIR adjudicates DHS practitioner disciplinary cases. As explained in the interim rule, the Department has determined that most of the duplicate provisions in § 1292.3 pertain to functions that are DHS's responsibility and do not need to be reproduced in EOIR's regulations in chapter V. The interim rule deleted the unnecessary regulations in § 1292.3, and revised § 1292.3 and 8 CFR part 1003 to reference applicable DHS regulations. The interim rule also transferred to 8 CFR part

1003 the provisions in § 1292.3 related to the adjudication of DHS's practitioner disciplinary cases. The interim rule also made technical changes to EOIR's practitioner disciplinary regulations and clarified a previous amendment to those regulations. *See* 73 FR 76914 (Dec. 18, 2008).

The Department provided an opportunity for post-promulgation comment even though this is a rule of internal organization for which a period of public comment is not required by statute. *See* 5 U.S.C. 553(b), (c). The comment period ended February 13, 2012. The Department did not receive any comments. Accordingly, the interim rule amending 8 CFR parts 1003 and 1292 that was published on January 13, 2012, is being adopted as a final rule without change.

### **Regulatory Requirements**

#### *Administrative Procedure Act*

The Department provided an opportunity for post-promulgation public comment under 5 U.S.C. 553, even though the nature of this rule makes it unnecessary to comply with the requirements in 5 U.S.C. 553 with regard to notice of proposed rulemaking and delayed effective date. *See* 5 U.S.C. 553(b), (d). The rule only makes technical amendments to the organization, procedures, and practices of the Department to improve the organization of the Department's regulations, reflects the transfer of functions pursuant to the Homeland Security Act of 2002, and recodifies existing regulations.

#### *Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. *See* 5 U.S.C. 601(2).

### *Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3501–3521, and its implementing regulations, 5 CFR part 1320, do not apply to this interim rule because there are no new or revised recordkeeping or reporting requirements.

### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### *Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*

This rule is not a major rule as defined by section 251 of SBREFA, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based enterprises in domestic and export markets.

### *Congressional Review Act*

This action pertains to agency organization, procedures, and practices and does not substantially affect the rights or obligations of non-agency parties; accordingly, it is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of SBREFA). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

### *Executive Orders 12866 and 13563*

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation, and Executive Order 13563. The Department has determined that this rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget (OMB).

*Executive Order 13132*

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

*Executive Order 12988*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

**List of Subjects**

*8 CFR Part 1003*

Administrative practice and procedures, Immigration, Legal Services, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

*8 CFR Part 1292*

Administrative practice and procedures, Immigration, Lawyers, Reporting and recordkeeping requirements.

**PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**PART 1292—REPRESENTATION AND APPEARANCES**

Accordingly, the interim rule amending 8 CFR parts 1003 and 1292 that was published at 77 FR 2011 on January 13, 2012, is adopted as a final rule without change.

April 19, 2013  
Date

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Eric H. Holder, Jr.  
Attorney General

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